IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NOS. 668 OF 1993, 389 OF 1998
AND 81 OF 1998.

WRIT PETITION NO. 668 OF 1993.

The Goa Education Officers
Association, a Society registered
under No. 11/Goa/83, Societies
Registration Act, 1860, through
its Secretary, Shri R.N. Naik,
r/at M-81, Housing Board Colony,
Alto Porvorim, Goa. ... Petitioner.

Versus

1. The State of Goa, through
   the Secretary (Education),
   Secretariat, Panaji.
2. The Goa Public Service Commission,
   EDC House, Dada Vaidya Road,
   Panaji, through its Secretary.
3. Dr. Celsa Pinto, Parvatibai
   Chowgule Higher Secondary
   School, Margao.
4. Shri K.K. Nadkarni, c/o Goa
   University, Bambolim. ... Respondents.

Mr. M.S. Sonak, Advocate for the Petitioner.

Mr. A.N.S. Nadkarni, Advocate General with Mr. H.R.
Bharne, Govt. Advocate and Mr. H.D. Naik, Addl.
Govt. Advocate for the Respondent No. 1.

Mr. A.N.S. Nadkarni, Advocate General with Mr. H.D.
Naik, Addl. Govt. Advocate for the Respondent No. 2.

Mrs. A.A. Agni, Advocate for the Respondent No. 3.

Mr. R.G. Ramani, Advocate for the Respondent No. 4.

WRIT PETITION NO. 389 OF 1998.

Shri G.G. Karandikar,
Assistant Director of Education,
Directorate of Education,
Govt. of Goa, Panaji. ... Petitioner.

Versus

1. State of Goa through its
   Secretary (Education),
   Secretariat, Panaji.
2. The Goa Public Service Commission,
   through its Secretary, EDC

House, Panaji.
3. Dr. Celsa Pinto, Assistant Director of Education, Directorate of Education, Panaji.
4. Shri K.K. Nadkarni, Principal, Govt. Higher Secondary School, Canacona.

Mr. M.S. Sonak, Advocate for the Petitioner.

Mr. A.N.S. Nadkarni, Advocate General with Mr. A.P. Lawande, Govt. Advocate and Mr. H.D. Naik, Addl. Govt. Advocate for the Respondents 1 and 2.

Mrs. A.A. Agni, Advocate for the Respondent No. 3.

Mr. R.G. Ramani, Advocate for the Respondent No. 4.

WRIT PETITION NO. 81 OF 1998.

Smt. Maria Imelda Liana de Menezes, Principal, Dr. T.B. Cunha Government Higher Secondary School, Altinho, Panaji. ... Petitioner.

Versus

1. The Director of Education, Directorate of Education, Govt. of Goa, Panaji.
2. State of Goa through its Chief Secretary, Secretariat, Panaji.
3. The Goa Public Service Commission, through its Secretary, EDC House, Dr. Atmaram Borkar Road, Panaji.
4. Smt. Sushama Bumb, Vocational Education Officer, Goa Board of Secondary and Higher Secondary Education, Porvorim, Goa.
5. Smt. Meera Deo, Dy. Education Officer, Office of South Education Zone, Margao.
6. Kum. Neela Kerkar, Dy. Education Officer, Office of North Education Zone, Mapusa.
7. Shri Diogo da Costa, Vocational Education Officer, Directorate of Education, Panaji.
8. Smt. Graceamma Verghese, Principal, Govt. Higher Secondary School, Khandola.

9. Smt. Vanita P. Vernekar,
   Principal, Govt. Higher
   Secondary School, Baina,
   Vasco-da-Gama.
10. Shri K.B. Marathe,
   Environmental Education
   Officer, Directorate of
   Education, Panaji.
11. Shri S.K. Rajmane, Assistant
   Director of Education,
   Directorate of Education,
   Panaji.
12. Dr. Celsa Pinto, Dy.
   Director of State Institute
   of Education, Porvorim.
13. Dr. K.K. Nadkarni, Principal,
   Govt. Higher Secondary School,
   Canacona.
14. Shri G.G. Karandikar, Assistant
   Director of Education,
   Directorate of Education,
   Panaji.
15. Shri G.L. Jadhav, Principal,
   Govt. Higher Secondary School,
   Valpoi. ... Respondents.

Mr. M.S. Sonak, Advocate for the Petitioner.

Mr. A.N.S. Nadkarni, Advocate General with Ms. W. Coutinho, Govt. Advocate for the Respondents 1 and 2.

Mr. A.N.S. Nadkarni, Advocate General with Mr. H.D. Naik, Addl. Govt. Advocate for the Respondent No. 3.

Mr. S.G. Bhobe, Advocate for the Respondent No. 4.

Mrs. A.A. Agni, Advocate for the Respondent No. 12.

Mr. R.G. Ramani, Advocate for the Respondent No. 13.

Coram: S. RADHAKRISHNAN AND
P.V. HARDAS, JJ.

Date: 20th August 2002.

ORAL JUDGMENT (PER HARDAS, J.)

All the above petitions are disposed of by a common Judgment as the petitions have been tagged together for hearing.

Facts in Writ Petition No. 668 of 1993:-

2. In this petition, the petitioner, a society of Goa Education Officers Association, has challenged the non-regularisation of 22 Officers of the Directorate of Education, who have been continued on adhoc basis for 5 to 8 years and the appointment of respondents 3 and 4, which is said to be in breach of the Recruitment Rules 1993. The petitioner states that it is a Society registered under the Societies Registration Act, 1860 bearing Registration Number II/Goa/83. The members of the petitioner Society include the Directorate of Education, Group 'A' and Group 'B' Gazetted Officers working in the Directorate of Education.

3. In paragraph 3 of the petition, it is stated that the present petition concerns the non-regularisation of service of almost 22 Officers of the Directorate of Education, who have been posted and continued on adhoc basis in the post of Assistant Director and Deputy Education Officer/Principal for periods ranging between 5 to 8 years. In the said paragraph, it is further stated that the petitioner Society takes an exception to the proposal to appoint respondents 3 and 4 to the post of Deputy Education Officer/Principal by direct recruitment in breach of the Recruitment Rules framed in 1993 and, thereby, adversely

affecting the rightful position of the said 22 Officers in their seniority as also their prospects of promotion.

4. The promotion to the post of Deputy Education Officer/Principal is governed by the Government of Goa, Daman and Diu, Directorate of Education, Group 'A' and Group 'B', Gazetted Posts Recruitment Rules, 1977, hereinafter referred to as 'the 1997 Recruitment Rules' for the sake of brevity. In terms of the 1977 Recruitment Rules, the recruitment to the post of Deputy Education Officer/Principal was specified as 50% by promotion and 50% by direct recruitment. In the case of recruitment by promotion, the qualifications prescribed were that a candidate should have been Vice-Principal, Teachers Training College, Headmaster of Government Multipurpose High School or Headmaster of Government High School, having 5 years service in the respective grades after appointment thereto on regular basis, besides possessing Master's Degree and Degree/Diploma in teaching/education as prescribed in the Secondary School Teachers.

5. In response to a long standing demand, the respondent no. 1, the State of Goa, in supersession of the old rules framed new rules known as "the Government of Goa, Directorate of Education, Group 'A, Gazetted Posts Recruitment Rules, 1993", hereinafter referred to

as 'the new Recruitment Rules'. The said Rules are dated 2nd July 1993 and were notified in the Official Gazette of the Government of Goa, dated 5th August 1993. As per the new Recruitment Rules, the method of recruitment to the post of Deputy Education Officer/Principal is prescribed. The age limit, the qualifications and other matters connected therewith are specified in Columns 5 to 13 of the Schedule appended to the new Recruitment Rules. Under Column 13, which provides for the method of recruitment, it has been specified that the post of Deputy Education Officer/Principal is required to be filled in by promotion, failing which, by direct recruitment. The educational and other qualifications have also been suitably amended by prescribing at least Second Class Master's Degree of a recognised University or equivalent, Degree in Teaching Education of a recognised University or equivalent, 12 years teaching experience in a High School or a Teachers Training Institution including at least 5 years experience in a responsible administrative capacity.

6. The respondent no. 2, the Goa Public Service Commission, issued an advertisement, dated 11th June 1993, inviting applications for direct recruitment to the two vacancies in the post of Deputy Education Officer/Principal. Pursuant to the issuance of the said

advertisement, interview calls were sent on 18th August 1993 and interviews were held by the respondent no. 2 on 27th August 1993. The petitioner has stated, in paragraph 13 of the petition, that such interviews could not have been held nor such interview calls could have been sent as, in the meantime, that is, on 5th August 1993, the new Recruitment Rules, that is the 1993 Rules came into force. Be that as it may, the respondent no. 2 selected respondents 3 and 4 for the post of Deputy Education Officer/Principal. The recommendation of respondent no. 2 was accepted by the respondent no. 1. However, before any appointment Order could be issued, an interim Order of stay was given by this Court in Writ Petition No. 583 of 1993 filed by one Shri Sadashiv Krishna Rajmane. The said Writ Petition No. 583 of 1993 ultimately came to be disposed off on 6th December 1993 and, although in the said petition the appointment of respondents 3 and 4 was challenged, the said challenge was not pressed, in view of certain other reliefs which had been granted to the said petitioner Shri Sadashiv Krishna Rajmane.

7. The respondents 3 and 4 ultimately came to be appointed by the Order, dated 3rd January 1994, which was published in the Official Gazette, dated 30th June 1994. The challenge in the petition to the appointment of respondents 3 and 4 is that the appointment is in

breach of the new Recruitment Rules of 1993 and in addition the respondent no. 4 does not possess a Degree in Teaching/Education. Thus, respondent no. 4 was, according to the petitioner, not eligible for being appointed.

8. The Government has filed its affidavit and in the affidavit it is stated that as per the 1977 Recruitment Rules, 50% were to be filled by promotion, failing which by direct recruitment, and 50% by direct recruitment. A requisition had been sent to the Goa Public Service Commission vide letter, dated 16th April 1993, for the purpose of selecting two candidates by direct recruitment. The respondent no. 2, Goa Public Service Commission, advertised the said posts of Principal on 10th June 1993 and the Goa Public Service Commission selected and recommended the names of respondents 3 and 4. The recommendation of the Goa Public Service Commission was accepted by the Government and an Order of appointment, dated 3rd January 1994, came to be issued appointing respondents 3 and 4. In paragraph 5 of the affidavit, it is stated that one Shri Sadashiv K. Rajmane had filed Writ Petition No. 583 of 1993 for quashing the selection made by the Goa Public Service Commission and had also prayed for the issuance of writ of mandamus for filling up the post of Principal/Deputy Education officer as per the new

Recruitment Rules. The petition was ultimately disposed off and, thereafter, the respondents 3 and 4 came to be appointed. It is further stated that in exercise of the powers conferred under Article 309 of the Constitution of India, the then Administration of Goa, Daman and Diu had framed the Recruitment Rules of 1977. The new Recruitment Rules were framed in the year 1993 and were published in the Official Gazette, dated 5th August 1993. In paragraph 6(a) of the affidavit the yearwise vacancies, which arose prior to the coming into force of the new Recruitment Rules, have been given. Thus, according to respondent no. 1, seven posts were to be filled by direct recruitment and seven by promotion. It is further stated that though a large number of vacancies were available for appointment by direct recruitment, only one vacancy was filled in the year 1986 by the appointment of one Smt. Sudha Lawande, which vacancy was of prior to 1982. As a stop-gap arrangement, the vacancies which arose were given to eligible candidates, who were holding feeder posts, on adhoc basis. It was also stated that if the vacancies were to be filled by direct recruitment, some of the candidates, who were promoted on adhoc basis, would have to be reverted to their substantive post, which was to be avoided. In order to avoid such a situation, two of the vacancies to be filled by direct recruitment were referred to the Goa Public Service Commission for

selection vide letter, dated 16th April 1993. The Goa Public Service Commission in turn advertised the said posts on 10th June 1993 and recommended the names of respondents 3 and 4 and they were, accordingly, appointed. It is categorically stated in the affidavit that the selection was itself held as per the old Recruitment Rules and the new Recruitment Rules, which came into force on 5th August 1993, were not at all applicable to the selection made in respect of the respondents. It is also submitted that since the vacancies had existed prior to the coming into force of the new Recruitment Rules, the same would be governed by the old Recruitment Rules of 1977. In the supplementary affidavit which is filed, the respondent no. 1 in paragraph 5 has stated that the respondent no. 3 is holding Ph.D., M.A. (First Class), B.Ed. (First Class) and having the requisite experience. The respondent no. 3 was recommended by respondent no. 2 and, accepting the recommendation, the respondent no. 3 came to be appointed. In respect of respondent no. 4, it is stated that he is holding Ph.D., M.Sc., Diploma in Higher Education and Diploma in Pharmacy. In paragraph 10, it is stated that as far as the grievance made of the regularisation of 22 Officers is concerned, two of them have already retired from service in the year 1996-1997, 19 Officers have already been regularised in service and one Officer, namely, Shri Angelo Pimenta,

could not be regularised as he did not have the requisite qualification as per the new Recruitment Rules of 1993.

Facts in Writ Petition No. 389 of 1998:-

9. The petitioner in this case was appointed as Deputy Education Officer, Directorate of Education, on adhoc basis, with effect from 13th August 1979. It is stated that the petitioner has been promoted on regular basis to the post of Deputy Education Officer, Directorate of Education, with effect from 11th November 1994. In the seniority list, the name of the petitioner appears at Serial No. 6 whereas the names of respondents 3 and 4 appear at Serial Nos. 4 and 5. On 10th October 1991, the petitioner was promoted to the post of Assistant Director, Directorate of Education, on adhoc basis. Thereafter, by Order, dated 14th April 1998, the petitioner and the respondent no. 3 have been promoted on regular basis to the post of Assistant Director, Directorate of Education. In the said Order, the name of the respondent no. 3 appears at Serial No. 4 whereas the name of the petitioner appears at Serial No. 9. In respect of the appointment of respondent no. 3, it is stated that her appointment Order is dated 3rd January 1994, by which time, the new Recruitment Rules of 1993 had already come into force. It was also stated

that respondent no. 3 was over-age at the time of her appointment. In respect of respondent no. 4, it is stated that at the time of his appointment, vide Order dated 3rd January 1994, the Recruitment Rules of 1993 were applicable as they had come into force. It is further stated that the Recruitment Rules of 1993 prescribe a Degree in Teaching/Education as essential qualification, which the respondent no. 4 did not possess. It is further stated that the respondent no. 4 does not possess a Degree/Diploma in Teaching/Education from a recognised University or equivalent and the respondent no. 4 only possesses a Diploma in Higher Education. Thus, affecting his eligibility. It is also stated that during the pendency of the petition, the respondent no. 3 has been promoted to the post of Deputy Director of Education, which is a further promotional post.

10. In the affidavit filed on behalf of the State, it is stated that as per the Recruitment Rules of 1977, the post of Deputy Inspector of Schools and other four posts mentioned in column 1 of the said Rules were to be filled 50% by promotion, failing which, by direct recruitment and 50% by direct recruitment. By Order, dated 26th June 1979, the post of Deputy Inspector of Schools was redesignated as Deputy Education Officer and, thus, the petitioner was appointed as Deputy

Education Officer on 13th August 1979 on adhoc basis. It is further stated that during the period 1982 to 1993, fourteen vacancies arose in the post of Deputy Education Officer and in paragraph 3 of the affidavit, the yearwise number of vacancies and the mode of filling is stated. Thus, in terms of the Recruitment Rules of 1977, seven posts were to be filled by direct recruitment and seven by promotion. During the said period, twelve Officers were appointed as Deputy Education Officers on adhoc basis by promotion and three vacancies had been filled in by direct recruitment and, therefore, the quota of promotees was exceeding the quota laid down by the Recruitment Rules of 1977. Therefore, in the year 1993, it was decided to fill up two posts of Deputy Education Officers by direct recruitment and, accordingly, the requisition was sent to the Goa Public Service Commission for selecting the candidates. The Goa Public Service Commission after holding inquiries, recommended the respondents 3 and 4, who, ultimately, came to be appointed. It is further submitted that vacancies existing in a Grade at a particular time, are to be filled in, in accordance with the Recruitment Rules then prevailing.

11. In paragraph 8 of the affidavit, it is stated that the respondent no. 3 is a Ph.D., M.A. (First Class), B.Ed. (First Class). The respondent no. 4 is

a Ph.D., M.Sc., Diploma in Higher Education and Diploma in Pharmacy. It is stated that the respondents 3 and 4 had the requisite qualification in terms of the 1977 Recruitment Rules and the Goa Public Service Commission had the discretion to relax the qualification in case of deserving candidates.

12. The respondent no. 2, the Goa Public Service Commission, has also filed its affidavit. In paragraph 6 it is stated that the qualifications prescribed for the post were as per the Recruitment Rules of 1977. The age limit prescribed in the said Recruitment Rules is 45 years. It is further stated that in the new Recruitment Rules of 1993 a degree in teaching/education was prescribed and not a diploma. It is stated that the age of the respondent no. 3 was 41 years and 7 months at the time she applied for the post and the age limit prescribed by the Recruitment Rules of 1977 was 45 years. Thus, it is denied that the respondent no. 3 had crossed the age limit when she was considered for the post. In paragraph 8, it is stated that as per the Recruitment Rules of 1977, possessing a diploma in teaching/education was necessary and not a degree. The respondent no. 4 had passed the Diploma in Higher Education in the year 1983 from the Bombay University and, as such, he had the requisite qualification prescribed in the Recruitment Rules of 1977.

13. In the present two petitions, therefore, the controversy is whether the Recruitment Rules of 1977 would govern the selection of respondents 3 and 4 or whether the Recruitment Rules of 1993 would govern their selection?

14. A reference may usefully be made to the decision of the Apex Court in **Gopal Krushna Rath v. M.A.A. Baig (dead) by L.Rs. and others,** 1999 AIR SCW 1819. In paragraph 6 of the report the Hon'ble Supreme Court has held thus:-

> "6. When the selection process has actually commenced and the last date for inviting applications is over, any subsequent change in the requirement regarding qualifications by the University Grants Commission will not affect the process of selection which has already commenced. Otherwise it would involve issuing a fresh advertisement with the new qualifications. In the case of **P. Mahendran v. State of Karnataka** (1990) 1 SCC 411 at 416 : (AIR 1990 SC 405 at pp. 408 and 409) this Court has observed:
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> "It is well settled rule of construction that every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect."
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> The Court further observed that:
>
> "Since the amending rules were not retrospective, it could not adversely affect the right of those candidates who were qualified for selection and appointment on the date they applied for the post, moreover, as the process

> of selection had already commenced when the amending Rules came into force, the amended Rules could not affect the existing rights of those candidates who were being considered for selection as they possessed the requisite qualifications prescribed by the Rules before its amendment."

15. The Hon'ble Apex Court in **Dr. P.N. Dubey and others v. State of M.P.,** (1997) 3 S.C.C. 497 has held that the Modes/Sources of Recruitment Rules in force on the date of advertisement would apply.

16. The Recruitment Rules of 1977 required as essential qualification a Degree/Diploma in Teaching/Education from a recognised University or equivalent. Thus, the respondent no. 4, who is holding a Diploma in Teaching was qualified. The respondent no. 3, as per the old Recruitment Rules of 1977 was not beyond the age specified therein. In our considered opinion and in view of the Judgments of the Hon'ble Apex Court referred to above, since the selection process had already commenced by the issuance of the advertisement, which required a candidate to obtain certain qualifications, the new Recruitment Rules, which came into force subsequent to the advertisement, would not govern the selection. Moreover, the posts to be filled in were of the year prior to the coming into force of the Recruitment Rules of 1993. The selection to these posts would be governed by the Recruitment Rules of 1977. As per the Recruitment Rules of 1977, the

respondents 3 and 4 had the requisite qualifications and, therefore, their selection cannot be faulted with on the ground that they did not possess the requisite qualification under the Recruitment Rules of 1993. These petitions, therefore, have no force and merit.

Facts in Writ Petition No. 81 of 1998.

17. The petitioner, by Memo, dated 18th February 1971, was appointed as Headmistress of Government Middle School, Directorate of Education, Government of Goa and, thereafter, by Order, dated 1st December 1983, was promoted as Headmistress, Government High School on officiating basis. This appointment was declared to be on regular basis and the petitioner held the post substantively with effect from 23rd February 1984. According to the petitioner, at the time of the petitioner's promotion to the post of Headmistress, the petitioner was B.A. and 'Curso de Escola Normal', which is equivalent to diploma in teaching for Secondary School Teachers/Diploma in Education. The said equivalence is confirmed by the letter, dated 3rd April 1968. According to the petitioner, in the seniority list in the cadre of Headmistress, Government High School, as also other equivalent posts, the name of the petitioner appears at Serial No. 20 and the names of respondents 4, 5 and 6 appear at Serial Nos. 13, 25 and

26 respectively.

18. According to the petitioner, in May 1986, the petitioner obtained the qualification of M.A. with Second Class from the University of Bombay. The promotion to the post of Deputy Inspector of Schools/Principal, Teachers College/Principal, Higher Secondary School/Social Education Officer/Education Officer was governed by the Government of Goa, Daman and Diu, Directorate of Education, Group 'A' and Group 'B' Gazetted Posts Recruitment Rules, 1977, hereinafter referred to as 'the Recruitment Rules of 1977' for the sake of brevity. As per the Rules, the promotions to the aforesaid posts are to be effected from amongst the feeder category comprising Vice Principal, Teachers Training College; Headmaster, Government Multi-purpose High School and Headmaster, Government High School possessing Master's Degree and Degree/Diploma in Teaching/Education prescribed for the Secondary School Teachers/Teacher Educator and having five years service in the respective grade after appointment thereto on regular basis. Thereafter the Recruitment Rules of 1977 were superseded by the new Recruitment Rules of 1993. As per the new Recruitment Rules of 1993, promotion to the posts are required to be made from out of the feeder category comprising Vice Principal, Teachers Training College/Vice Principal, Government Higher Secondary

School; Headmaster of Government High School; Assistant Education Officer (other than technical), having eight years service in the grade after appointment thereto on regular basis and possessing Master's Degree Second Class and Degree in Education.

19. The petitioner was promoted on adhoc basis to the post of Deputy Director of State Institute of Education on 10th October 1991. In May 1994, the petitioner obtained a Degree in Education, that is, B.Ed.. On the recommendation of the Goa Public Service Commission, petitioner was promoted as Principal, Government Higher Secondary School, on regular basis with effect from 11th November 1994. By the same Order, which is dated 2nd December 1994, respondents 5 and 6 were also promoted to the cadre of Principal, Government Higher Secondary School, but, were shown in the merit position below that of the petitioner. According to the petitioner, respondents 5 and 6 do not possess Master's Degree in Second Class, which is an essential requirement as per the Recruitment Rules of 1993. Hence, respondents 5 and 6, according to the petitioner, were ineligible for promotion. Some where in 1995, respondent no. 4, who was in the feeder category but was not promoted at all, made certain representations against the promotion of the petitioner on the ground that the petitioner did not possess the essential

qualifications. By letters, dated 15th June 1995, 11th September 1995 and 4th April 1996, information had been solicited from the petitioner regarding the petitioner possessing the essential qualifications. The petitioner, however, duly furnished the necessary information. On 25th November 1996, a tentative seniority list of Headmasters in the Government High Schools was circulated. The name of the petitioner did not figure in the seniority list as with effect from 11th November 1994, the petitioner had already been promoted as Principal, Government Higher Secondary School, on the recommendation of the Goa Public Service Commission. On 21st January 1997 a final seniority list of Headmasters, Government High Schools was circulated. In the said seniority list, the name of the respondent no. 4 appears at Serial No. 1, respondents 8 and 9 appear at Serial Nos. 3 and 4 respectively and respondent no. 7 appears at Serial No. 9. On 26th March 1997, the Government of Goa, Directorate of Education, issued an Order promoting twelve persons, on the recommendation of the Goa Public Service Commission regarding review Departmental Promotion Committee communicated to the Government by its letter dated 6th March 1997, on regular basis to the post of Principal, Government Higher Secondary School/Deputy Education Officer in the Directorate of Education. The said twelve Officers were on probation for a period of two

years. In the same Order it was stated that the names of the petitioner and one Shri D.R. Takale stood deleted from the Order, dated 2nd December 1994, by which the petitioner was promoted as Principal, Government Higher Secondary School with effect from 11th November 1994. It was further stated that the petitioner and Shri Takale are deemed to have continued as Principal, Government Higher Secondary School/Deputy Education Officer on adhoc basis until further orders. Thus, the effect was that the petitioner's regular promotion, by the Order, dated 2nd December 1994 stood withdrawn and respondents 5 and 6, who were junior to the petitioner in the feeder category and who, according to the petitioner, did not possess the requisite qualifications on the date of their promotion, were promoted and their merit position was elevated to 8 and 9. By the same Order, the respondent no. 4, whose name did not figure in the promotion Order dated 2nd December 1994, was promoted with the merit position at Serial No. 12. The petitioner, by her letter, dated 9th April 1997, represented to the Government regarding the withdrawal of her promotion. One of the grounds in the representation was that the petitioner has not been heard nor was she given any notice, though the order withdrawing her promotion affected her 'gravely'. The Government again issued an Order, dated 22nd April 1997, which was in partial modification of the impugned Order,

dated 26th March 1997 and had promoted respondent no. 4 as Deputy Education Officer with effect from 11th November 1994. Ultimately, the petitioner, by the Order, dated 13th May 1997, came to be promoted to the post of Principal/Deputy Education Officer with immediate effect alongwith respondents 7, 8 and 9. Against this Order, the petitioner again represented her case by her representations, dated 2nd June 1997 and 12th August 1997. By communication, dated 12th August 1997, the petitioner was informed that the Department had received representations from aggrieved persons, who objected to the Minutes of the Departmental Promotion Committee (1994) and had asked for a review. Based upon the representations, after examining the issues, Government decided to request the Goa Public Service Commission to have a review Departmental Promotion Committee so that no injustice is done. The Goa Public Service Commission reviewed the Departmental Promotion Committee proceedings and, after reviewing the performance of each Officer, the Order impugned in the present petition, dated 26th March 1997, was reviewed by considering the vacancies upto 1993. The petitioner was further informed that, in respect of the vacancies of 1994, as the petitioner had fulfilled the conditions pertaining to educational qualification and service experience as per the Recruitment Rules, she was promoted by the Order, dated 13th May 1997. The

petitioner was also informed that her qualification of 'Curso de Escola Normal'- Diploma in Education has no adverse bearing for her consideration in the promotion list. However, the petitioner did not qualify for the earlier vacancies as others stood higher in the grading. The petitioner objected to the tentative seniority list and had also represented by her representation, dated 4th October 1997 and, ultimately, on 4th December 1997 a final seniority list came to be passed.

20. In this petition, the petitioner has prayed for quashing and setting aside the impugned Order, dated 26th March 1997 and restoration of the Order dated 2nd December 1994. The second relief, which the petitioner claims, is that she be placed at Serial No. 1 in the merit list in the Order, dated 13th May 1997. The next relief which the petitioner claims is for withdrawal of the final seniority list, dated 4th December 1997 and to recast the same on the basis of the Order, dated 2nd December 1994 or the modified Order, dated 13th May 1997 and she also prays for quashing and setting aside the Order, dated 14th April 1998, whereby promotions were effected on the basis of the seniority list, dated 4th December 1997.

21. In the affidavit filed by Shri K.M. Nambiar, Secretary to the Goa Public Service Commission, it is

stated that the Departmental Promotion Committee had met on 8th November 1994 and filled up twelve vacancies of Principal, Higher Secondary School, Deputy Education Officer, etc., in the Education Department, which had occurred in the years 1983 to 1993. It is stated in paragraph 3 that the petitioner had fallen in the zone of consideration for four vacancies in 1988 and based on the merit as assessed by the Departmental Promotion Committee, she was selected for promotion. The respondents 5 and 6 were also selected in the same manner against the vacancies of 1992. In paragraph 4 it is stated that the respondents 5 and 6 did not possess Master's Degree in Second Class and, as such, were not eligible to be promoted in terms of the Recruitment Rules of 1993, but, since they were considered for promotion against the vacancies of 1992 the Recruitment Rules of 1977, which were in force for the vacancies of 1992, were applied and, as per the said Recruitment Rules, the respondents 5 and 6 were eligible for promotion because the 1977 Recruitment Rules contemplated only a Master's Degree and did not stipulate a Master's Degree in Second Class. In paragraph 5 of the affidavit it is stated that some representations had been received from the Officers, who were not recommended for promotion, by the Departmental Promotion Committee, which met on 8th November 1994, pointing out various irregularities while considering

those promotions. It is further stated that after examining the matter in consultation with the Committee, the Government recommended that a review Departmental Promotion Committee be held. In the same paragraph from items (i) to (iii) grounds are cited for holding of the review Departmental Promotion Committee. It is further stated that the review Departmental Promotion Committee had observed that the vacancy of 1988 for which the petitioner had been recommended for promotion did not indicate the date and month of the vacancy. However, as the petitioner had qualifying service of 5 years in the post of Headmistress in December 1988, she could be considered for promotion against the vacancy of 1988. It is further stated in paragraph 5 that the review Departmental Promotion Committee examined the confidential reports of the Officers falling in the zone and assessed them carefully. It was on the basis of that assessment that the Officers promoted in the Order, dated 26th March 1997, were recommended.

22. The respondent no. 4 in her affidavit has stated that she was appointed as a Teacher Grade I on 20th July 1970 and has passed M.Sc. in Zoology in Second Class. She obtained her Bachelor of Education Degree in 1979 and was appointed on a substantive basis as Vice Principal/Headmaster of Government High School with effect from 7th August 1982. She also states that

she was conferred a Doctorate in Marine Sciences by the University of Goa in the year 1993. She further states that in the seniority list, dated 17th January 1986, she has been shown at Serial No. 19 whereas the petitioner, who was junior to her, has been shown at Serial No. 28. She has further stated that "Curso de Escola Normal" is not equivalent to Diploma in Teaching for Secondary School Teachers. According to her, the said "Curso de Esola Normal" is prescribed only for primary schools and not for secondary schools and as such cannot be considered as sufficient qualification as required under the Recruitment Rules of 1977. According to her, the petitioner became eligible for promotion after the petitioner obtained a Degree of Education some time in May 1994 and as the petitioner did not possess the essential qualification of Bachelor of Education prior to 1994, the petitioner was ineligible for promotion under the 1977 Recruitment Rules. In respect of the allegation of the respondent no. 4 being the wife of an ex-Education Secretary, she has stated that her husband was posted at Mizoram from July 1993 to September 1997 and had no connection whatsoever in the matter of her promotion.

23. The affidavit of Smt. Rinku D. Khirwas, who, at the relevant time, was the Director of Education, is filed for the purpose of opposing the petition. She has

stated that in the tentative seniority list, the petitioner was placed at Serial No. 20 and the respondents 4, 5 and 6 had been placed at Serial Nos. 13, 15 and 24 respectively. The seniority list, however, was not finalized. It is further stated in the affidavit, at paragraph 6, that, thereafter, another tentative seniority list was circulated, dated 25th November 1996, and in the said seniority list the petitioner was placed at Serial No. 12 whereas respondents 4, 5 and 6 were placed at Serial Nos. 6, 16 and 15 respectively. In paragraph 10, it is stated that the petitioner was promoted to the post of Headmaster, Government High School, vide Order dated 1st February 1983 on officiating basis and the petitioner took charge of the said post on 23rd February 1984. It is further stated in the said paragraph that the essential requirement under the Recruitment Rules of 1977 was 5 years of regular service in the grade of Headmaster. It is, therefore, stated that since the petitioner took charge of the post on 23rd February 1984, the petitioner did not qualify for promotion under the Recruitment Rules of 1977 as the petitioner had not completed 5 years of regular service in the grade of Headmaster. It is further stated that the petitioner had fallen in the zone of consideration for the 4 vacancies of 1988 and was selected for promotion. The respondents 5 and 6 were also selected in the same manner against the

vacancies of 1992. In paragraph 13 of the affidavit, it is stated that because of the representations, the Government decided to hold a review Departmental Promotion Committee. In paragraph 17, it is stated that the petitioner was not eligible for promotion in the year 1988. It is further stated that the guidelines for promotion issued by the Government required the Departmental Promotion Committee to consider promotion on the basis of the benchmark grade prescribed for each post. In this system, Officers are to be promoted as per the seniority subject to their obtaining the benchmark grade prescribed. This had not been followed in the case of the petitioner. It is further stated in the same paragraph that the petitioner was erroneously considered in the vacancy of July 1988 and was ineligible for promotion on the ground that she had not completed 5 years of regular service in the feeder cadre. In paragraph 20, it was stated that the minutes of the Departmental Promotion Committee will be produced in the Honourable Court as and when required.

24. In respect of the challenge of the petitioner to the promotion of the respondents 5 and 6, on the ground that the respondents do not possess Second Class in Master's Degree, which is an essential requirement as per the new Recruitment Rules of 1993, it may be borne in mind that the respondents 5 and 6 were promoted

against the vacancies of the year 1992. Undisputably the Recruitment Rules of 1977 were in force. Since the respondents 5 and 6 were promoted against the vacancies of 1992, the Recruitment Rules then in force for the vacancies of that year would govern the promotion of the respondents. The 1977 Recruitment Rules did not contemplate possessing a Master's Degree in Second Class. This was the requirement which was introduced in the Recruitment Rules of 1993. The 1993 Recruitment Rules cannot be given retrospective operation unless it is so clearly indicated in the Rules itself. The qualifications and other terms and conditions would be governed by the Rules existing when the vacancy arose. Therefore, in our considered view, the challenge to the promotion of respondents 5 and 6 must fail on this count.

25. In respect of the allegations against respondent no. 4 that the entire exercise of withdrawing the promotion was done at the behest of respondent no. 4, who, as wife of an ex-Education Secretary/Secretary of the Department of Women and Child Welfare of Government of Goa was instrumental in the issuance of the impugned Order is without any basis. According to respondent no. 4, her husband was then posted at Mizoram from July 1993 to September 1997 and had no connection whatsoever in the matter of her

promotion. She has also denied that the representations made by her were backed by her husband or in any way influenced by his official position. Respondent no. 4 also denied that her husband used his influence in any manner in the matter of her representations or in the consideration of the representations or in the order passed making the promotions. For want of any material, the charge against the respondent no. 4 is bound to fail. Even otherwise, the respondent no. 4 was senior to the petitioner and was placed in the seniority list at a position higher than that of the petitioner.

26. Coming to the last point which is urged by the petitioner in the present case, that is, that the petitioner was not heard when the Order impugned in this petition, dated 26th March 1997, came to be passed. It is an admitted fact that the petitioner was promoted by an Order dated 2nd December 1994. The petitioner was on probation for a period of 2 years. The Departmental Promotion Committee, after scrutinising the merit of the petitioner, had recommended the petitioner for promotion. The petitioner, before the issuance of the impugned Order, worked on the promotional post for nearly two years and three months. By the issuance of the impugned Order, which was as a result of a review Departmental Promotion Committee and reconsideration of the eligibility of the petitioner to be promoted, visits

the petitioner with grave consequences not only of the withdrawal of the promotion but affecting her seniority. In such situation, according to us, an opportunity ought to have been given to the petitioner conveying to her the reasons for holding a review Departmental Promotion Committee as well as the finding of ineligibility of the petitioner to the post to which she was promoted. According to us, the petitioner ought to have been given an opportunity to put forth her case to demonstrate that the petitioner was eligible to be promoted. A decision ought to have been arrived at after hearing the petitioner in the matter. This unfortunately has not been done in this case and the petitioner, who was promoted by Order, dated 2nd December 1994, suddenly found her promotion withdrawn by the issuance of the impugned Order, dated 26th March 1997. It is a fact that certain letters had been addressed to the petitioner seeking her clarification regarding the qualification of "Curso de Escola Normal" but, when the letters were issued, the petitioner was not informed that her eligibility was under a cloud. The learned Advocate General has stated that the records of the review Departmental Promotion Committee are available for perusal of this Court. According to the learned Advocate General, gross irregularities had been committed by the earlier Departmental Promotion Committee and, therefore, a review Departmental

Promotion Committee was held. We do not propose to go and examine whether the holding of a review Departmental Promotion Committee was justified in the circumstances stated by the Government. We find that the holding of the review Departmental Promotion Committee and, thereby, withdrawing the promotion of the petitioner, has certainly prejudiced the petitioner and in such circumstances, according to us, there is a breach of natural justice and the petitioner ought to have been given an opportunity of putting forth her case.

27. In the backdrop of the facts stated above, therefore, according to us, the impugned Order, dated 26th March 1997 cannot be sustained so far as it relates to the petitioner and, therefore, the impugned Order withdrawing the promotion of the petitioner deserves to be quashed and set aside. We, however, make it clear that the Government shall give an opportunity to the petitioner to explain the adverse circumstances affecting her eligibility for promotion and, thereafter, take decision according to law. The other reliefs in the petition, that is, restoration of the seniority of the petitioner in the seniority list dated 4th December 1997 and for quashing and setting aside the promotion of the respondents made on the basis of seniority list dated 4th December 1997, in the circumstances, cannot be granted.

28. After giving our anxious consideration to the rival submissions made by the learned counsel for the parties, according to us, there is no merit in Writ Petition Nos. 668 of 1993 and 389 of 1998 and the Writ Petitions are, accordingly, dismissed. Rule is discharged with no order as to costs. The Writ Petition No. 81 of 1998 is partly allowed on the terms indicated above and rule is made absolute on the above terms. Rule in respect of the reliefs denied stand discharged with no order as to costs.

(S. RADHAKRISHNAN)
JUDGE.

(P.V. HARDAS)
JUDGE.

ed's.